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EXAMINER
ENATSKY, AARON L

ART UNIT	PAPER NUMBER
3713	

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/657,154	Applicant(s) NAKAMURA ET AL.	
	Examiner Aaron L Enatsky	Art Unit 3713	

-- Th MAILING DATE of this communication app ars on the cov r sheet with the correspondence address --

Peri d f r Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 June 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-51* is/are pending in the application.

4a) Of the above claim(s) *3-5,24-26,30-32,34-36,41-43 and 50* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-2, 6-23, 27-29, 33, 37-40, 44-49, and 51* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restriction

1. Applicant's election with traverse of the invention of Group I in Paper No. 8 is acknowledged. The traversal is on the grounds that Groups I-IV all determine player spatial positioning, thus all require overlapping search areas. For instance, the election of vibration spatial positioning would have additionally required a search for vibration sensors in Class 702/54,56, which is not required for light detection. Further, sound spatial positioning would require a search in an acoustics area of Class 181/124. Therefore, Examiner disagrees with Applicant's remarks of no additional burden by the inclusion of the remaining Groups. Restriction is maintained and **FINAL**.

Claims 3-5, 24-26, 30-32, 34-36, 41-43, and 50 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a nonelected invention (Group I), the requirement having been traversed in Paper No. 8.

Pre-Amendment

2. Examiner acknowledges receipt of Pre-Amendment to add claim 51, received on 4/09/02. Claim 51 is considered generic and will be considered by Examiner.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors. A few examples are

Applicant requiring that there are indicative positions that a player can indicate and a command mark is blown out at a preset blowout position.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 6-7, 22, 27-28, 33, and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Lipps et al. '182 (Hereafter, Lipps).

In re claims 1 and 51, Lipps teaches of a game apparatus with a light emitter operated by a player (2:54-55), a position detector detecting the light from the bat (1:45-47 and 2:56-58), and a control unit controlling a game is inherent through the game disclosure (3:5-13).

In re claim 6, Lipps teaches that a direct cable connection can transmit to a game machine (2:51-52).

In re claim 7, Lipps teaches that a command display issues a prescribed operation to a game player and determines correctness of player device operation (3:5-12).

In re claims 22 and 27, Lipps teaches a light emitter operated by a player (2:54-55).

In re claims 28 and 33, Lipps has a game method to be executed on the game in the form of various sports training games (1:55-57).

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 44-49 are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al '968 (Hereafter Suz). Suz teaches a game machine providing a player with a plurality command marks blown out from a prescribe position, with each having different commands associated with each other (Fig. 1-9). Suz further teaches that musical rhythm is integrated with the game command marks, where the commands indicate a position a player needs to take (16:9-17:8).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 2, 8, 10, 12, 16, 20, 23, 29, 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps. Lipps the claimed limitations as discussed above in addition to a light emitter disposed at a prescribed position (Fig. 2) and a position

detector detecting emitted light (5:22-55). Lipps does not teach a light detector operated by a player, only that light is reflected from the player object. However as Lipps teaches light emitters disposed on a player operable device or alternatively located in conjunction with a game machine. Having light detectors disposed on the player operable device would be an obvious matter of design choice because Lipps shows that emitter/detectors, regardless of location, can perform the same functionality. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include light detectors on the player operable device.

In re claims 8, 16, and 40, Lipps teaches a command mark is blown out to a preset position through the teaching of a baseball pitch to the game player (3:5-22). A player can indicate the correct position by swinging a player operable device at the baseball where a control unit judges a correct indication through a hit. When at bat, a plurality of indicative positions is inherently provided as the swing zone of a player. While Lipps is lacking disclosure of displayed indicative positions, it would have been obvious to one of ordinary skill in the art at the time the invention was made to display the possible swing zones so a player can quickly learn the correct possible play positions.

In re claim 10, Lipps teaches that a player needs to be positioned at the relative center of the game device (Fig. 2).

In re claim 12, Lipps teaches that a light emitter is held in player's hand, which therefore is put on part of a player's body (Fig. 2).

In re claim 20, Lipps teaches the above mentioned claimed limitations, but does not teach holding a pose. However Lipps is directed to teaching a player to properly position himself for a variety of sports related games, sensing a plurality of proper

elements crucial to correct game performance (1:45-55). As baseball, golf and other games rely on holding a position ready for a period of time to insure a correct movement, one would be motivated to assure correct player position over a period of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include a retained pose over time detector to insure a player is in a ready position to make a correct move in a game.

In re claim 23, Lipps teaches as above, that a light emitter can be located alternatively on a player operable device or opposite a player.

In re claim 29, Lipps has a game method to be executed on the game in the form of various sports training games (1:55-57).

11. Claim 9, 11, 13-15, 18-19, 37-39, 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Suz.

In re claim 9 and 44, Lipps teaches the claimed limitations as discussed above, but does not teach a command mark with a command of a specific operation. Suz teaches a dance game that provides command marks with commanding a specific operation (Fig. 7). Lipps and Suz are related as game machines capturing moves of a user, wherein a game computer judges move correctness. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps and include a specific command operation with the command mark taught by Suz so that a player attempting to associate correct moves with specific pitches can be told what type of pitches were being displayed.

In re claim 11, Lipps teaches the limitations as discussed in claim 10.

In re claim 13, Lipps teaches the limitations as discussed in claim 12.

In re claim 14, Lipps teaches that a vibration detection mechanism is included in a player operable device (2:40-42). Lipps does not teach the use of a percussion musical instrument body of the player operable device, however, lacking criticality to the claimed invention, the shape is considered a design choice and Lipps teaches that the invention can be used in a variety of activities (1:55-57). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a body shaped like a musical instrument for use in musical practice game.

In re claim 15, Lipps teaches the limitations as discussed in claim 14.

In re claim 18, Lipps in view of Suz teach the limitation as discussed above, but does not teach sound corresponding to indicative positions. Suz teaches providing sound corresponding to dance image data (9:56-57). Lipps and Suz are related as discussed above, where it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to include sound corresponding to image data so that during player training, a player can be alerted to a pitch style and where to place a bat in the correct indicative position providing an non-visual alternative cue to keep a player's attention on an approaching visual object.

In re claim 19, Lipps in view of Suz teach the limitation as discussed above, and additionally teaches prohibiting a specific operation. Suz teaches operation prohibition through the disclosure that position indicators are provided for a player indicating allowed positional movements (Fig. 7) and also that correct moves are judged and scored (11:1-67). As Suz teaches displaying only allowed positions, which indicates to a player that other positional moves are prohibited.

In re claim 37, Lipps in view of Suz teach the musical instrument shape device as disclosed in claim 14, and Lipps additionally teaches a hit detector (2:35-45).

In re claims 38 and 39, Lipps in view of Suz teach the claimed limitations as described in claim 9.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Suz and further in view of Clear Vision Gaming (Hereafter, CVG). Lipps in view of Suz teaches the claimed limitations as discussed above, but does not teach a plurality of game players operating a game that is controlled based on a level of agreement of the operation between the game players. CVG teaches a game using an alternative player operable unit that allows a plurality of players to participate in a variety of track and field events (Page 1). Through the track and field choices, CVG teaches that when a plurality of players compete, the players must agree on the operation/selection of a particular track and field event. Thus, CVG teaches a game is controlled based upon a level of agreement of a plurality of players for game operation. Lipps in view of Suz and CVG are related in that both teach capturing moves of a user using alternative player operable devices and judging player move execution. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps in view of Suz to include the option of a plurality of participating players operating a game based on a level of agreement taught by CVG so that the game machine taught by Lipps in view of Suz can incorporate a variety of games (Lipps, 1:54-56), thereby increasing player enjoyment by adding a level of competition that a machine cannot provide.

13. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Allard et al.'193 (Hereafter, Allard). Lipps teaches the claimed limitations as

discussed above in addition to sensing a player's height (1:46), but does not teach game adjustment based on a player's height. Allard teaches that a player can have the game machine indicative position adjusted (Claim 40 and 7:57-65). One would be motivated to modify Lipps as adjusting for a player's height is considered an ergonomic design choice. Well known in art dealing with human interactions, adjustment to an individual's physical attributes is necessary to accommodate a system directed at a general population. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Lipps to adjust indicative positions for player height to insure that a range of player's can have equal advantage, thus increasing amount of available players.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zur et al. '549, discloses a player game trainer providing command marks and positions for a player to move indicating a success or failure.

Kobayashi '278, discloses a plurality of light emitters/sensors opposed to a player and a player operable light sensor in a game device.

Ota '013, discloses a video dance game that is controlled by a player input device.

Watanabe et al. '479, discloses a controller that can be used in a musical game device.

Sagawa et al. '244, discloses a music action game.

Ishikawa et al. '110, discloses a music action game with player operable controllers.

Toyama et al. '547, discloses a music game based on player rhythm matching.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron L Enatsky whose telephone number is 703-305-3525. The examiner can normally be reached on 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on 703-308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-9302 for regular communications and 703-746-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ale
August 23, 2002

JESSICA HARRISON
PRIMARY EXAMINER